IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision: 27-9-1996.

SPECIAL CIVIL APPLICATION No 4287 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

Dahyabbai Motibhai Patel and 5 Others.

Versus

State of Gujarat

Appearance:

Mr. A.J. Patel Advocate for the petitioners.

Mr. A.G. Uraizee, AGP., for Respondent State.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/09/96

ORAL JUDGEMENT

The petitioners, by this petition, call in question the validity of the order passed by the Collector of Ahmedabad District on 13th September 1994 whereby certain conditions came to be imposed, one of which is about the land to be treated as new tenure land and impartible asset.

2. The facts giving rise to the present petition may be stated. There was agricultural land bearing Survey No. 45

within the Sim of village Thaltej in Dascroi Taluka of Ahmedabad District. It was granted to Lavjibhai Khokhabhai Vankar. At that time it was a new tenure land. The petitioners wanted to construct residential premises forming the co-operative housing society. The land was therefore got converted into old tenure land. Thereafter the petitioners purchased the same on 31st January 1972. In 1973, the Co-operative Society in the name and style "Jaiambenagar Vikas Mandal" was formed. The plans and estimates were prepared and then the petitioners started to construct the dwelling units on the land. The petitioners then on 1st February 1973 showed their willingness before the Taluka Development Officer to pay up the premium at the rate of 15% of the then prevailing market value and if necessary N.A. permission and regularisation of the construction made till then. The T.D.O. of Dascroi taluka, considering the materials before him, granted N.A. use permission on 26th July 1974 and regularised the use as well as the construction made till then imposing certain conditions, one of such conditions was to pay up the premium fixed by the Collector within a period of 45 days. It appears that during the period granted the amount of premium was not paid and thereby breach of the condition was found to have been committed. The petitioners could not pay the premium because the Collector did not fix the same. Thereafter on 4th April 1977 the petitioners received a notice calling upon them to explain why the land should not be forfeited to the Government on the ground of the breach of condition having been committed. The petitioners then made several representations and also submitted their case, but on 5th and 6th June 1980 the order of forfeiture came to be passed by the then Collector of Ahmedabad District. By the time the construction was over and members started to reside in the blocks constructed. Thereafter on 13th June 1980 the petitioners received the notice calling upon them to state whether they were willing to accept the re-grant of the land on payment of Rs. 6,51,800/-. According to the petitioners the demand made being too high, necessary representations were made but all in vain. With no option, therefore, the petitioners filed Regular Civil Suit No. 669 of 1980 before the Court of the Civil Judge (S.D.) at Narol. At the conclusion of the hearing, the suit came to be decreed in favour of the petitioners. The State then preferred the appeal being Regular Civil Appeal No. 118 of 1982 before the District Court at Narol. The then learned District Judge, hearing the parties, allowed the appeal and set aside the decree passed by the lower Court. Against the decree passed in appeal, Second Appeal No. 39 of 1984 was preferred before this Court. During the pendency of that appeal, several parleys for talks about amicable settlement were also held. At last it was suggested that the Government would reconsider about re-grant of the land provided the appeal was withdrawn.

During the pendency of the appeal, on 10th September 1990 an application for re-grant was already made by the petitioners and that was to be considered. As the petitioners got the assurance about the re-grant, they withdrew the appeal pending before this Court on 8th July 1992 and intimation about the withdrawal was given to the respondent on 15th July 1992. The then learned Collector at Ahmedabad wrote a letter to the petitioners so as to know whether the petitioners were ready to pay up the market value in case their application about re-grant was accepted. The petitioners urged to withdraw the forfeiture and also made necessary representation because according to them the amounts suggested on the basis of the market value then prevailing were too high. The Collector remaining firm suggested to pay up the amount of Rs.15,90,392/-. On 30th October 1992, the Collector rejecting all the submissions in this regard, directed the petitioners to deposit the amounts within a period of 30 days. The petitioners then requested to reduce the amount and reconsider the case. It was also urged to grant instalments. It seems, the Collector turned down all the submissions and requests made and finally made it clear that the petitioners will have to pay the amount suggested with the word of caution that consequences would follow if payment was not made. At last on 1st December 1993, part payment was made and the balance of the total amounts were paid on 1st January 1994. After the amounts were paid, as per the demand made by the Collector, the order re-granting came to be issued on 7th September 1994 imposing certain conditions which is produced at Annexure `R', wherein one of the conditions mentioned is as follows:-

(quoted portion in `Gujarati' language
as per original judgment.)

By introducing the abovequoted condition, it was made clear to the petitioners that the land was converted into a new tenure land and had become an impartible estate. The petitioners were then shocked as it was never contemplated. Thereafter the petitioners made necessary representation to the Collector for necessary modification in the condition quoted above so that they could transfer the ownership to the members of the society. The Collector did not accept their submision and as their request was turned down, the petitioners are constrained to prefer this petition wherein they have challenged the validity of the act of the Collector, imposing the abovequoted condition in the order.

3. According to the petitioners' learned advocate, having regard to the abovestated chequered history of the case and the manner in which the petitioners were led to believe the

particular state of affairs,it was improper and unjust on the part of the Collector to impose that condition. The Collector ought to have borne in mind that formerly the land was converted into the old tenure land recovering the amount equivalent to 60 times of the land revenue levied at that time.

4. Mr. Uraizee, the learned A.G.P., on behalf of the respondent submitted that there was nothing wrong on the part of the Collector to impose that condition because once the land was forfeited and thereafter again the issue was considered, it was open to the Collector to impose any of the conditions which he deemed fit while re-granting the land.

5. Having regard to the rival contentions and the chequered history hereinabove stated, the only point that arises for consideration is whether it was open to the Collector to impose the condition whereby the land was converted into new tenure land making it impartible and indivisible. It may be stated that here is the case of re-grant and not a fresh grant. In this case, therefore, re-grant amounts to restoration of the same original position that stood when the order of forfeiture came to be passed and so it cannot ordinarily be with some modification, alteration or addition in the conditions to the detriment of the parties right, title and interest they acquired, unless ofcourse the law in force forbids the same while re-granting. To put it in different words, in such cases the equity dictates that as far as possible in case of re-grant restoration should be without any modification or change or alteration or addition unless the law forbids to do so, or directs otherwise.

6. In this case, on query, the learned A.G.P. representing the State could not point out any justifiable reason from the materials on record about modification, alteration or imposition of a new condition in the original state that stood at the time of forfeiture. In view of the matter, the condition imposed cannot be allowed to stand being not just and contrary to equity.

7. For the abovestated reasons, the petition requires to be allowed. It is, therefore, accordingly allowed. The abovestated condition imposed in the order is hereby quashed and set aside. Rest of the order of the Collector, is maintained. No costs in the circumstances of the case. Rule to the above extent is made absolute.

.....